STATE OF MICHIGAN

COURT OF APPEALS

ALBERT CHENDES, BERNADETTE CHENDES, CHRIS GRAY, CARMEN HORTON, JOSEPH M. JEPSON, MICHAEL JEPSON, CHARLES H. MILLER, EDWARD WISDA, DR. DONALD ROEGNER, MARLYS ROEGNER, RICHARD AKER, LAWRENCE CRANDALL, and CHERYL CRANDALL,

Plaintiffs-Appellants/Cross-Appellees,

v

ALLEN D. DOLSON and JAMIE A. DOLSON,

Defendants-Appellees/Cross Appellants.

UNPUBLISHED
August 17, 2006

No. 259967
Branch Circuit Court
LC No. 03-010634-CH

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's finding of no cause of action following a bench trial. Plaintiffs sued defendants for prohibiting access to Coldwater Lake from land they believed constituted a public road. Plaintiffs argued two alternative theories for relief, 1) public highway through dedication and acceptance by user, and 2) prescriptive easement. The trial court granted defendants a directed verdict on the prescriptive easement claim for want of exclusivity. Following the bench trial, it determined the property was never a public highway and found for defendants. We affirm.

Plaintiffs first assert the court erred by determining that the northerly portion of the disputed property was never a highway. We agree.

As with questions of law generally, we review the legal requirements for establishing a highway by user de novo. *Hagerman v Gencorp Automotive*, 457 Mich 720, 727; 579 NW2d 347 (1998). However, we review a trial court's factual findings for clear error. *Michigan Citizens for Water Conservation v Nestle Waters North America, Inc*, 269 Mich App 25, 40; 709 NW2d 174 (2005). A finding is clearly erroneous if the reviewing court is left with a definite conviction that a mistake was made. *Id.* A road may become public property in three ways, 1) by statutory dedication and an acceptance on behalf of the public, 2) a common law dedication

and acceptance, or 3) a finding of highway by user.[1] *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 554; 600 NW2d 698 (1999). To establish a dedication under the highway-by-user statute, MCL 221.20, a plaintiff must show (1) a defined line of travel, (2) evidence that the road was used and worked on by public authorities, (3) evidence of public use for ten consecutive years, and (4) open, notorious and exclusive public use. *Cimock v Conklin* 233 Mich App 79, 86-87; 592 NW2d 401 (1998).

There must be not only a dedication, but acceptance by public authorities as well. *Boone v Antrim Co Bd of Road Comm'rs*, 177 Mich App 688, 694; 442 NW2d 725 (1989). While there was no record evidence of a dedication in the instant case, a common law dedication need not be formal or written as long as the actions of the owners unequivocally demonstrated a clear intent to dedicate. *Id.* at 693. "Under the highway-by-user statute, a particular period, in this case ten years, creates a presumption of dedication to the public." *City of Kentwood v Sommerdyke Estate,* 458 Mich 642, 653; 581 NW2d 670 (1998). Here, dedication is presumed as a result of public use for almost seventy years. With respect to the defined line of travel, although defendants' predecessor Robert King testified that he was unsure of the exact boundaries of his property, he assumed the two-track to the lake was the public access. And several witnesses testified that the area was historically maintained with gravel. Hence, plaintiffs presented evidence that a defined line of travel existed.

With respect to evidence that the road was used and worked on by public authorities, the road must have been kept in a reasonably passable condition. *Indian Club v Lake Co Rd Comm'rs*, 370 Mich 87, 91; 120 NW2d 823 (1963). Here, 1957 Ovid Township meeting minutes indicated Irwin Crawford was paid to maintain highways leading to the lake. Joe Maxson testified that he was paid by the township to mow the disputed area in the late 1950's or early 1960's. Branch County Road Commission employee William Orris testified that he hauled gravel to the disputed area as requested by the township in 1962 or 1963. Property owner Chris Gray testified that he sought and received permission from the Road Commission to gravel the road in 1969. Property owner Michael Jepson, who was also on Ovid Township Fire Department's board of directors, testified that he graded the area and sometimes plowed in the winter to keep the area open so that the fire department could access the lake for water. The fact that numerous witnesses were able to use the area to launch watercraft, although they acknowledged that a four-wheel-drive vehicle was required to do so, indicated that the road was kept in a reasonably passable condition. See *Villadsen v Mason Co Rd Comm*, 268 Mich App 287, 290, 295-298; 706 NW2d 897 (2005), aff'd on other grounds 475 Mich 857 (2006).[2]

---

[1] In *City of Kentwood v Sommerdyke Estate*, 458 Mich 642, 654; 581 NW2d 670 (1998), our Supreme Court noted the difficulty of proving a common law dedication; it indicated that the highway-by-user statute modified the common law by creating an implied dedication and, thus, eliminating the need to prove a fictional event.

[2] Although the Supreme Court found this Court's analysis with respect to the use and maintenance of the road in *Villadsen, supra* unnecessary because of an express dedication of the road to public use, we find the authority underlying the prior analysis to be sound and, thus, find the analysis persuasive.

The third element – public use for ten years – was established by overwhelming evidence that the disputed area was used as an access to the lake by the public as early as 1933, and was used continuously until defendants erected a fence sometime after they acquired the property in 2002. However, under the fourth element, a public highway is not established if public use of a roadway is merely permissive, regardless how long it occurs. *Donaldson v Alcona Co Bd of Co Rd Comm'rs*, 219 Mich App 718, 724; 558 NW2d 232 (1996). It must also be open, notorious and hostile. *Id.* Nevertheless, plaintiffs presented evidence that the use was hostile. Six witnesses recalled public access signs at the site. One of defendants' predecessors stated that when she had a problem with those using the area, she called the township. Gray stated that he called the Road Commission when a former landowner once attempted to block access, and the Road Commission made the landowner remove the obstruction. Moreover, in 1955, the township filed suit against a neighboring landowner to enjoin the erection of encroachments on the disputed area; in the complaint, the township alleged that it had maintained the access for forty years prior to the suit. When an action of a public authority diminishes a private property right of the landowner, the action is considered exclusive or hostile. *Id.* at 725.

Nevertheless, while we find that a cause of action for highway by user existed, we find plaintiffs did not have standing to raise the claim. "'[P]ublic rights actions must be brought by public officials vested with such responsibility.'" *Gyarmati v Biefield*, 245 Mich App 602, 605; 629 NW2d 93 (2001), quoting *Comstock v Wheelock*, 63 Mich App 195, 202; 234 NW2d 448 (1975). Because plaintiffs did not claim any right greater than that of the general public, they were not proper parties. *Comstock*, *supra* at 203. We will not reverse a trial court's decision that reaches the right result albeit for the wrong reason. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005).

Plaintiffs next contend the trial court erred in dismissing their prescriptive easement claims for want of exclusivity. We disagree.

We review a trial court's ruling on a motion for directed verdict for an abuse of discretion. We review all evidence, including all reasonable inferences that can be drawn from it, in a light most favorable to the nonmoving party, to determine whether there existed questions of fact for a jury's determination. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). An easement is the right to use another's land for a specific purpose. *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). Ownership of easement rights may be acquired by prescription in the same general manner that title to land may be acquired by adverse possession. *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000). An easement by prescription results from use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years. *Id*. The use must also be exclusive, not in the sense that it is used only by the person claiming the prescriptive easement, but in the sense that it does not depend on a like right by others. *Id.* at 680.

It appears from the record that all elements for a prescriptive easement were satisfied except for the "exclusivity" requirement. Many people specifically testified that they believed they had the right to use the property because they thought it was a public access, and they were part of the public; thus, they were not doing so because of a right unique to them or their group alone. They were using the property because they were part of the general public and believed it was a public access to the lake. Plaintiffs' claim to the easement was dependent "upon the like right in others," and it cannot be said that plaintiffs' claimed right was in anyway exclusive. Our

Supreme Court in *Dummer v United States Gypsum Co*, 153 Mich 622, 637; 117 NW2d 317 (1908), stated:

> By exclusive the law does not mean that the right of way must be used by one person only, because two or more persons may be entitled to the use of the same way, but simply that the right should not depend for its enjoyment upon a similar right in others, and that the party claiming it exercises it under some claim existing in his favor, independent of all others. It must be exclusive as against the right of the community at large.

Because plaintiffs did not claim a right to use the property independent of the community at large, they failed to meet all required elements for a prescriptive easement, and the trial court did not abuse its discretion in granting a directed verdict in defendants' favor on this issue.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Donald S. Owens